

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the	)
Complaint Against	)
BERV KIMBERLEY, KELLY ADDY,	)
and BRAD MARTIN	)

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**SUMMARY OF FACTS AND STATEMENT OF FINDINGS**

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Sharon Estrada, a candidate for Senate District 7, filed a complaint against Berv Kimberley, Kelly Addy, and Brad Martin. Candidate Estrada alleges that they have violated Mont. Code Ann. § 13-35-234 by making false statements in a campaign flier.

**SUMMARY OF FACTS**

1. Candidates Estrada and Kimberley are opponents for the vacant seat in Senate District 7 in the upcoming election. Kelly Addy is chairman of the Montana Democratic Party. Brad Martin is executive director of the Montana Democratic Party.

2. Estrada alleges that a campaign flier in support of Kimberley contains false statements in violation of Mont. Code Ann. § 13-35-234. She alleges that the following underscored statements in the flier are false:

Big money expanded-gambling interests are trying to buy Sharon Estrada a Senate Seat. . . . Sharon Estrada was their paid lobbyist. . . . [Emphasis added].

Why would the Texas Billionaire Hunt Brothers care about a Montana State Senate race? They sure care about this one. They gave Sharon Estrada \$500. . . . [Emphasis added].

Estrada was the chief lobbyist and leader of the Blackjack: 21 in '91 campaign. Her salary was paid by . . . Well, she won't say. Despite inquiries from the press, Sharon Estrada wouldn't release ANY financial

figures for 21 in '91. . . . [Underscoring added; capitals in original].

3. Estrada contends that she has never been a paid lobbyist for any gambling interests, and that she has never registered as a lobbyist with the Commissioner of Political Practices. She was involved with the "Blackjack: 21 in '91" campaign, an effort to legalize the game of 21, or "blackjack" in Montana. Estrada stated that she became involved in this effort at the request of former Senator Dennis Nathe, but that she never received a salary for her efforts.

4. Estrada states that she received campaign contributions of \$300 from Sherman Hunt, \$100 from Todd Hunt, and \$100 from Clay Hunt, all of whom live in Texas. She states that these men are not the "Texas Billionaire Hunt Brothers": Bunker, Herbie, and Lamar Hunt.

5. Estrada, citing an article from the October 18, 1990 edition of the Tobacco Valley News, states that she "willingly discussed the finances of the 21 in '91 petition drive".

6. The campaign flier was prepared by the Montana Democratic Party. Kimberley reviewed the flier prior to its distribution, and takes responsibility for its content, although he was not involved in drafting the language in the flier. When he reviewed the flier he assumed that it contained accurate statements.

#### STATEMENT OF FINDINGS

Mont. Code Ann. § 13-35-234, Montana's political criminal libel statute provides:

**Political criminal libel - misrepresenting voting records.** (1) It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality or to knowingly misrepresent the voting record or position on public issues of any candidate. A person making such a statement or representation with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

(2) In addition to the misdemeanor penalty of subsection (1), a successful candidate who is adjudicated guilty of violating this section may be removed from office as provided in 13-35-106 and 13-35-107.

Assuming the requisite mental state exists, the statute can be violated through 1) a false statement or charge reflecting on a candidate's character; 2) a false statement or charge reflecting on a candidate's morality; 3) a misrepresentation of a candidate's voting record; or 4) a misrepresentation of a candidate's position on public issues. I specifically make no findings on the issue of whether the flier contains any false statements or charges, or misrepresentations. Based on the allegations in the complaint and the facts disclosed in this investigation, it is my conclusion that the flier does not violate Mont. Code Ann. § 13-35-234. Kimberley admitted during the investigation of this matter several statements in the brochure were in poor taste and that he does not care if Estrada gets contributions from someone named Hunt in Texas. I agree that Kimberley made statements that are in poor taste and irrelevant to the real issues of the campaign. But poor taste and irrelevancy are not grounds for prosecution under Montana's political criminal libel law.

The statements about which Estrada complains do not reflect on her character or morality, nor are they misrepresentations of her



voting record or position on public issues. The Legislature has chosen to criminalize only certain statements through enactment of the political criminal libel statute. None of the statements contained in the flier are of the type prohibited by the statute.

Based on the preceding, there is insufficient evidence to conclude that Kimberley, Addy, or Martin violated Mont. Code Ann. § 13-35-234.

DATED this 4<sup>th</sup> day of November, 1994.



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ED ARGENBRIGHT  
Commissioner of Political Practices